

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL CORIA and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Ogden, UT

*Docket No. 00-550; Submitted on the Record;
Issued December 26, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant established disability for the intermittent period August 25, 1997 through April 8, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On June 4, 1998 appellant, then a 40-year-old tax examiner's assistant, filed a notice of occupational disease alleging that her right hand and wrist tendinitis was caused by her employment.

In a medical report dated May 22, 1998, Dr. Brian H. Morgan stated that appellant's condition was right wrist tendinitis, both flexors and extensors, and that, on May 18, 1998, she was released to work without restrictions. He stated that he would see her in two weeks and that if she remained pain free she would be released from medical care.

In a medical report dated June 8, 1998, Dr. Morgan stated that appellant was released from medical care and had reached maximum medical improvement as of that date.

In a medical report dated July 28, 1998, Dr. Morgan stated that appellant had a normal range of motion and that her impairment rating was zero percent. In an attending physician's report of the same day, he stated that appellant was partially disabled from April 14 through June 8, 1998.

On July 30, 1998 appellant filed a claim for wage loss from July 8, 1997 through May 19, 1998.

On August 5, 1998 the Office advised appellant that her claim for tendinitis right wrist had been accepted.

By letter dated October 7, 1998, the Office advised appellant that it could not process the dates she submitted for compensation because she did not support these dates with medical evidence indicating that she was unable to work during these times. The Office then listed dates for which it did award compensation.¹

By decision dated June 15, 1999, the Office denied appellant compensation for the intermittent period August 25, 1997 through April 8, 1998 “due to a lack of supportive medical evidence.”²

On July 27, 1999 appellant requested an oral hearing.

By decision dated September 30, 1999, the Office denied appellant’s request for an oral hearing as untimely. The Office stated that additional evidence on the issue of wage loss could be submitted and fully considered accompanying a request for reconsideration.

The Board finds that appellant failed to establish that she was disabled during the period August 25, 1997 through April 8, 1998.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden, she must present rationalized medical opinion evidence, which is based upon a complete factual and medical background, showing causal relationship. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of the employee that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relationship.³

As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

In the present case, the Office accepted appellant’s claim for right wrist tendinitis. Appellant filed a claim for wage loss from July 8, 1997 to May 19, 1998. The Office, on October 7, 1998, notified appellant that she would have to submit additional medical evidence to support her time lost on certain days. The Office then listed the dates where she would receive wage-loss compensation and dates where no medical evidence supported her time off. Appellant did not submit additional medical evidence to support specific hours and days she alleged she

¹ The Office processed 25 dates for compensation, all of them between March 27 and May 18, 1998. The Office did not process 10 dates from July 8 to September 3, 1997 and March 6, 1998.

² A review of the outstanding dates the Office provided appellant on October 7, 1998 revealed that the Office paid wage loss for five additional dates, July 8 to August 21, 1997.

³ See *Neal C. Evins*, 48 ECAB 252, 253 (1996).

⁴ See *Frazier V. Nichol*, 37 ECAB 528 (1986).

was off work as a result of her accepted condition and the Office, on June 15, 1999, denied her claim for wage loss.

Appellant did not support her claim with medical evidence that would have established her claim that her time lost during the intermittent period August 25, 1997 through April 8, 1998 was causally related to her right wrist tendinitis.

The Board also finds that the Office properly denied appellant's request for a hearing as untimely.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁵

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁶

In the present case, the Office issued a June 15, 1999 decision accepting appellant's claim for right wrist tendinitis but denying her wage loss from August 25, 1997 through April 8, 1998 due to lack of medical evidence. Appellant did not request a hearing until she submitted a letter dated July 27, 1999, more than 30 days after the issuance of the Office's June 15, 1999 decision.

Appellant's July 27, 1999 hearing request was made more than 30 days after the date of issuance of the Office's June 15, 1999 decision, hence, the Office was correct in finding in its September 30, 1999 decision that appellant was not entitled to a hearing as a matter of right. The Office also exercised its discretion in further considering the request for an oral hearing and concluded that appellant could pursue her claim by requesting reconsideration along with the submission of medical evidence. The Office exercised its discretionary powers in denying appellant's request for a hearing, and in so doing, did not act improperly.⁷

⁵ 5 U.S.C. § 8124(b).

⁶ *Henry Moreno*, 39 ECAB 475 (1988).

⁷ *Corlisia L. Sims (Smith)*, 46 ECAB 172 (1994).

The decisions of the Office of Workers' Compensation Programs dated September 30 and June 15, 1999 are hereby affirmed.

Dated, Washington, DC
December 26, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member